



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 26:120. Advertising agencies.

5 RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.310, 139.330

6 STATUTORY AUTHORITY: KRS 131.130, 139.710

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) and 139.710 authorize  
8 the Department of Revenue to promulgate administrative regulations for the assessment,  
9 collection, refunding, administration, and enforcement of the Kentucky tax laws. This  
10 administrative regulation establishes requirements and guidelines for the application of sales and  
11 use tax to purchases and sales of tangible personal property and digital property by advertising  
12 agencies.

13 Section 1. Definitions. (1) "Advertising agency" means a business engaged primarily in the  
14 professional service of developing strategy, concept, and design for the placement of advertising  
15 on radio or television stations, or in newspapers, magazines, or other media.

16 (2) "Advertising services" means all advertising agency activities involved in the  
17 conceptualization, development, production, and refinement of a master advertisement prior to its  
18 reproduction by the advertising agency or a third party including creative concept development,  
19 design, layout, consultation services, research, script and copy writing, art preparation, public  
20 relations, and account management services.

21 (3) "Master advertisement" means the original advertising material created by the advertising

1 agency for reproduction as tangible personal property or digital property for the purpose of display  
2 or other advertising uses, such as master commercials, camera ready art, proofs, and corporate  
3 logos.

4 Section 2. Advertising Agencies as Consumers in Creation of Master Advertisement. (1) An  
5 advertising agency shall be the consumer of all [the] tangible personal property and digital property  
6 used in the performance of its advertising services to produce a master advertisement regardless  
7 of whether the property the agency purchases is acquired in the name or account of the advertising  
8 agency or its client. The tax shall apply to the advertising agency's purchase of:

9 (a) All tangible personal property or digital property for use in the performance of its  
10 advertising services, including the purchase or rental of stock photos and movie footage delivered  
11 as tangible personal property or digital property;

12 (b) Any materials that become a component of the master advertisement; and

13 (c) Any tangible personal property or digital property that is incidentally provided to the client  
14 as part of the advertising services.

15 (2) An advertising agency shall not claim that its purchase of tangible personal property or  
16 digital property is exempt from sales and use tax because the property is to be used in fulfilling a  
17 contract with:

18 (a) The federal government, state government, or political subdivision thereof;

19 (b) Any department, agency, or instrumentality of the federal government, state government,  
20 or political subdivision thereof; or

21 (c) A religious, educational, or charitable institution exempt from tax under KRS 139.495.

22 (3) The performance of advertising services shall not constitute manufacturing or processing  
23 production of tangible personal property or digital property for sale. Therefore, an advertising

1 agency shall not claim that its purchase of tangible personal property or digital property used in  
2 the performance of its advertising services is exempt from sales and use tax under the:

3 (a) Raw material, industrial tool, and industrial supply exemption as provided in KRS  
4 139.470(9)[(10)]; or

5 (b) The machinery for new and expanded industry exemption as provided in KRS 139.480(10).

6 (4) If acting in the capacity of a consumer, an advertising agency shall not bill its client for tax  
7 on charges made for advertising services.

8 Section 3. Advertising Agencies as Retailers After Creation of Master Advertisement. (1) An  
9 advertising agency shall be a retailer of tangible personal property and digital property the  
10 advertising agency sells to its clients or to others on behalf of its clients regardless of whether the  
11 sale is at a marked-up price. This provision shall include property reproduced from a master  
12 advertisement whether the advertising agency or a third party actually reproduces the materials.  
13 This provision shall not include property described in Subsection 1 of Section 2 of this  
14 administrative regulation that the advertising agency uses in creating a master advertisement.

15 (2) An advertising agency engaged in business as a retailer shall:

16 (a) Complete a "Kentucky Tax Registration Application", Revenue Form 10A100, to register  
17 with the Department of Revenue for a retail sales and use tax permit; and

18 (b) Report and pay the applicable sales or use tax utilizing Revenue Form 51A102, "Sales and  
19 Use Tax Return".

20 (3) Taxable receipts from an advertising agency's retail sale of tangible personal property or  
21 digital property shall include all charges for services that are a part of the sale of tangible personal  
22 property and digital property including charges for:

23 (a) Inbound freight;

1 (b) Production supervision; or

2 (c) Print management that directly relate to the sale of particular tangible personal property.

3 (4) Gross receipts subject to sales tax shall not include periodic print management fees or other  
4 retainer fees not related to the sale of particular tangible personal property or digital property and  
5 paid whether or not there is a transfer of tangible personal property or digital property in a given  
6 fee period.

7 (5) An advertising agency may purchase tangible personal property and digital property it sells  
8 to or for its clients as a sale for resale without payment of the tax if the advertising agency:

9 (a) Provides [~~provides~~] to its suppliers a properly completed:

10 1.[(a)] Kentucky "Resale Certificate", (Revenue Form 51A105);

11 2.[(b)] Multistate Tax Commission (Uniform Sales and Use Tax Certificate Multijurisdiction);

12 3.[(c)] Streamlined Sales and Use Tax Agreement – Certificate of Exemption (Revenue Form  
13 51A260); or

14 4.[(d)] Other documentation containing the information required by KRS 139.280; and

15 (b) Reports and pays the applicable sales or use tax on their sales of the tangible personal  
16 property, digital property, and services included in KRS 139.200 utilizing Revenue Form 51A102,  
17 "Sales and Use Tax Return".

18 Section 4. Joint Activities by Advertising Agencies. (1) If an advertising agency contracts with  
19 a client to provide both advertising services and the sale of tangible personal property or digital  
20 property, receipts subject to tax shall be determined by the following guidelines provided the  
21 charges for the advertising services are clearly delineated from the charges for the tangible personal  
22 property or digital property on the customer's invoice.

23 (a) Any transfer of tangible personal property or digital property for a consideration, other than



1 the master advertisement and the items described in Subsection 1 of Section 2 of this administrative  
2 regulation used in the creation of the master advertisement, to a client or a third party on behalf of  
3 a client shall be considered a retail sale of tangible personal property or digital property subject to  
4 sales tax.

5 (b) Receipts from agency fees, service charges, or commissions exclusively for advertising  
6 services shall not be subject to sales tax, including charges for placing advertisements in print,  
7 broadcast, or other media.

8 (c) The amount separately stated for the tangible personal property or digital property shall not  
9 be less than the fair market value of similar property sold in a similar transaction not involving the  
10 provision of advertising services.

11 (2) If an advertising agency contracts with a client to provide both advertising services and the  
12 sale of tangible personal property or digital property and does not clearly delineate the charges on  
13 the customer's invoice, the total billing amount is subject to tax.

14 Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to  
15 applicable copyright law, at:

16 (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;  
17 [~~40620~~];

18 (2) At a Kentucky Taxpayer Service Center during business hours; or

19 (3) On the department website [~~Web site~~] at <http://revenue.ky.gov>.

103 KAR 26:120

APPROVED BY AGENCY:

*Daniel P. Bork*  
DANIEL P. BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

*November 5, 2019*  
Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on January 23, 2020, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov) (email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 26:120

Contact Person: Lisa Swiger  
Phone Number: (502) 564-9526  
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to advertising agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance to advertising agencies and conform to KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by updating statutory references, providing guidance to advertising agencies on filing, and updating language within the body of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to advertising agencies.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All advertising agencies as well as their customers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:



(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 26:120

Contact Person: Lisa Swiger  
Phone Number: (502) 564-9526  
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: